IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 619 OF 2007

WITH

CIVIL APPLICATION NO. 874 OF 2007

IN

SPECIAL CIVIL SUIT NO. 19 OF 2007

Zafir Ahmed Mohd. Ilyas Shaikh ... Appellant
(Orig. Plaintiff)

Vs.

The Bhiwandi Nizampur Municipal
Corporation & Ors. ... Respondents

Mr.A.M.Sarogi, Advocate, along with
S.K.Chaursia,Advocate, for the appellant
Mr. R.S.Apte,Advocate, for the respondent No.1.
Ms. Leena Patil, Advocate, for Mr.P.M.Pradhan,
Advocate for Respondent No.2.

CORAM: J.H.BHATIA,J.

DATE: 30th November,2007.

P.C.

1. Heard learned Counsel for the parties.

2. According to the appellant-plaintiff, the disputed House No.1074 at village Naigaon is in existence since 1982 and since then he has paid the taxes. Accordign to him, he has been given permissioon from the then Grampanchayat and after amalgamation of the village in the Respondent Municipal Corporation, he has regularly paid the tax.

3. In 1999, the Respondent No.1 Municipal Corporation issued a notice alleging that the appellant has carried out construction without obtaining permission from the Municipal Corporation. He has challenged that notice and produced the letter of permission. The learned trial Judge rejected it as it does not mention the measurement and the plan is not accompanied. Thus, the learned Judge rejected the prayer of the plaintiff for injunction pending the suit.

4. After hearing the learned counsel for the parties and perusing the record, I find that the payment of property tax by the plaintiff for the disputed property since 1982-83 till the Corporation issued notice indicates that the structure is in existence since 1982. The question as to whether the proper permission was obtained or not is yet to be decided at

the time of final hearing of the suit.

5. In my considered opinion, the very purpose of the suit may be frustrated if the interim relief is not granted particularly when the structure is in existence for the last about 25 years and admittedly, there is no allegation of encroachment on the public property.

6. Therefore, the Appeal is allowed.

7. The learned Counsel for the appellant undertakes to produce the photographs of the disputed structure in the office of the Municipal Corporation by Monday, the 3rd December, 2007.

8. The parties shall maintain status quo pending the hearing and final disposal of the suit.

9. As the Appeal itself is disposed of, the Civil Application does not survive and stands disposed of.

(J.H.BHATIA,J.)